



January 3, 2007

Dr. David Moreau  
Chairman, Environmental Management Commission  
Dept. of City and Planning  
UNC-CH CB 3140  
Chapel Hill NC 27599

Dear Dr. Moreau:

The Haw River Assembly, Environment North Carolina and the Southern Environmental Law Center are environmental organizations participating in the Jordan Lake Stakeholder Project, working to craft rules to reduce the nutrient pollution in the Jordan reservoir. We are writing to express our concerns about the current draft proposed rules that are scheduled to be presented to the Water Quality Committee next week. At various points over several years we have expressed our concerns to the Division of Water Quality and to the Environmental Management Commission (EMC). Because the Water Quality Committee of the EMC is considering sending these rules out for broader public input, we are writing to request that the rules be revised to provide adequate nutrient reductions prior to being subject to the public comment period. We remain concerned over the many delays this set of rules has faced; however the rules must be strong enough to improve water quality. The current draft we have seen has been weakened in several key areas addressed below.

We believe the rules should be strengthened, by returning language to them that was in the draft the WQC reviewed over a year ago, as detailed below, *and* we urge the full EMC to send final draft rules out out for public comment at the March EMC meeting.

### ***Weaknesses in Current Draft Rules:***

#### **1. Wastewater Treatment Plants**

**We strongly recommend that the wastewater discharge requirements be revised to require nitrogen discharge reductions as soon as possible.** The deadline for implementation of new nitrogen reductions was changed from 2011 (in the May 2006 draft rules) to 2016 in the current draft. The revised deadline is yet another extension that pushes the schedule for any action to almost 20 years after the state first proposed nitrogen reductions in nutrient sensitive waters such as Jordan Lake. Although we remain concerned that the original date of 2011 creates a high risk potential for threats to water quality associated with excessive algae growth, the 2016 deadline will even further jeopardize the health of Jordan Lake without adequate safeguards. We do not believe that phosphorus reductions, that would

be implemented sooner, would be effective by themselves in controlling what the state's algae expert Mark Vander Borgh has described as one of North Carolina's most prolific algae growth reservoirs.

## **2. Non-point Source Pollution: Existing Development**

**We strongly recommend that the rules contain specific requirements to protect Jordan Lake from non-point source pollution from existing development.**

The current draft of the rules addressing the nutrients associated with polluted run-off from developed areas during rainfall has been severely weakened. It is imperative to address the pollution from existing development - without this component the nutrient load reductions will not be sufficient to clean up Jordan Lake. If we do not address the current sources of pollution at Jordan Lake we are designing a strategy for failure. It is only common sense that for a lake that is already impaired there must be a strategy to effectively reduce the nutrients resulting from existing development. Weaknesses in the current draft rules include:

- The current draft rules (September 26, 2006) lack specific timeframes, loading and consequences of inaction.
- The current draft rules give opportunity for credit for programs already in place subsequent to the baseline and creates credits for excessive reductions. 15A NCAC 2B .0266 (3) (a) (iv).
- The current draft gives local governments 3 years to conduct feasibility studies for retrofits to reduce nutrients from existing development - and the local governments propose the pace of the retrofits. 15A NCAC 2B .0266 (4).
- Retrofits shall be *initiated* within 4 years after the effective date of the rule. It would be at least 2012 before any reductions for nutrient pollution from existing development stormwater are initiated. 15A NCAC 2B .0266 (4).
- Volume control has been eliminated in this draft— an essential part of controlling polluted run-off.

In order for local governments to fully comply with the nutrient reduction strategy, the rules must contain specific loading reduction targets to be achieved from existing development. We strongly recommend that the existing development rules be revised to include requirements, including numeric goals, by which compliance can be measured.

Although we agree that an adaptive management approach, with flexibility for local governments, may be an effective method to move the rules forward and to make improvements in water quality from lands in existing development, we believe the current language fails to provide adequate benchmarks or protections from continued water quality degradation.

## **3. Agriculture**

We strongly recommend that the agriculture rules only count nutrient loadings made by agriculture after the baseline year. The current draft of the rules allows agriculture to count, as part of the required nutrient reduction, any installed best management practices, including those installed prior to the baseline year. Jordan Lake is impaired. Any reductions in nutrient loading made by the agriculture sector have not been sufficient to reduce the nutrient loading to the lake and have not prevented further degradation. All reductions must be counted from a single point in time. Otherwise the trading

program, which allows trading between sectors, will count reductions made in advance of the baseline year. We are concerned that this unequal accounting method actually permits a lower overall reduction and will not meet the overall loading targets required to clean up Jordan Lake.

#### **4. Forestry**

We believe that the pre-harvest notification that was earlier proposed should be re-instated in the rules. There was broad stakeholder support for this proposal. Logging operations, especially on the large scale that often precedes residential development construction, can be a significant source of phosphorus through sediment pollution to streams. Local governments agreed that notification about logging of these sites would be useful to the overall strategy for nutrient reduction.

### ***Conclusion***

**Jordan Lake is a vital resource for our state and it is essential that any proposed set of rules not only protect Jordan Lake from future pollution but will also clean up the current pollution.** The Jordan Lake watershed continues to be subject to increasing pollution loads and every surface water in the watershed stands to benefit from protective rules. The 2006 draft 303(d) list of Impaired Waters in the Haw River/Jordan lake watershed shows that almost every creek receiving municipal wastewater and stormwater is considered impaired (see attached list). Towns and cities throughout the Haw River/Jordan lake watershed would benefit from effective rules that would reduce nutrient pollution in their own local streams as well as in Jordan Lake.

**Despite claims to the contrary, Jordan Lake is in trouble. Efforts to clean up the lake have been delayed several times, and the longer we go without a clean-up plan in place, the more the lake suffers. The cost of inaction could be very high if we wait too long to begin the clean-up.** The State has been aware of the nutrient pollution in Jordan Lake since 1987 and since that time (and despite a legislative mandate) nothing has been implemented to prevent further degradation or to clean up the existing pollution. Jordan Lake continues to worsen throughout this protracted rulemaking process. Please see the attached “State of the Lake” report by the Haw River Assembly which details the current pollution problems.

Jordan Lake is an important resource for the Triangle area and the state of North Carolina. We are not the only ones concerned with the lake. As evidenced by more than two thousand cards and comments from concerned citizens submitted to the Division of the Water Quality in 2005, expressing support for earlier, stronger versions of the management strategy, people care about the lake and want it cleaned up as soon as possible. This concern was also expressed by the General Assembly with the passage of the Drinking Water Reservoir Protection Act in 2005. We urge you to insist that the draft rules for Jordan Lake that will go out for public comment meet the requirements for nutrient reductions in the Clean Water Responsibility Act of 1997 and the TMDL that would remove it from the EPA 303 (d) Impaired Waters List.

Finally, given the long time frame that the already impaired Jordan Lake will be receiving continued and increased nutrient pollution loads before these proposed rules take effect, we urge the creation of an ‘Emergency Management Plan’. This plan would make sure authorities are prepared to deal with crises

that could result from toxic algae outbreaks, fish kills, closure of recreation facilities and drinking water restrictions due to increased nutrient pollution.

**In closing, we urge the members of the Environmental Management Commission and the Water Quality Committee to strengthen these rules and send them out for public comment no later than the full March 2007 EMC meeting.**

Sincerely,

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Haw River Assembly

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